

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

		Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet)
Applicant's or agent's file reference see form PCT/ISA/220		FOR FURTHER ACTION See paragraph 2 below
International application No. PCT/US2004/007247	International filing date (day/month/year) 10.03.2004	Priority date (day/month/year) 10.03.2003
International Patent Classification (IPC) or both national classification and IPC C04B28/00, C04B7/26		
Applicant FLOWABLE FILL, LTD.		

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



European Patent Office
D-80298 Munich
Tel +49 89 2399 - 0 Tx 523656 e-mail d

Authorized Officer

Vathilakis, S



10/552345

JC20 Rec'd PCT/PTO 06 OCT 2005
International application No.
PCT/US2004/007247

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material:

- a sequence listing
- table(s) related to the sequence listing

b. format of material:

- in written format
- in computer readable form

c. time of filing/furnishing:

- contained in the international application as filed.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority for the purposes of search.

3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/007247

Box No. II Priority

1. The following document has not been furnished:

- copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).
 translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date is the claimed priority date.

2. This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N) Yes: Claims 5,7,9
 No: Claims 1-4,6,8

Inventive step (IS) Yes: Claims 9
 No: Claims 1-8

Industrial applicability (IA) Yes: Claims 1-9
 No: Claims

2. Citations and explanations

see separate sheet

Box No. VI Certain documents cited

1. Certain published documents (Rules 43bis.1 and 70.10)

and / or

2. Non-written disclosures (Rules 43bis.1 and 70.9)

see form 210

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2004/007247

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)****Re Item V.**

- 1 The following documents are referred to in this communication:
D1 : EP 1 112 985 A (HALLIBURTON ENERGY SERV INC) 4 July 2001 (2001-07-04)
D2 : WO 03/000615 A (MINERAL RESOURCE TECHNOLOGIES) 3 January 2003 (2003-01-03)
D3 : WO 03/070655 A (FLOWABLE FILL LTD ; TIMMONS SCOTT F (US)) 28 August 2003 (2003-08-28)
D4 : US 4 038 095 A (NICHOLSON JOHN PATRICK) 26 July 1977 (1977-07-26)
D5 : WO 03/045873 A (SETLIFF BROTHERS II LTD ; PIKE CLINTON W (US); TIMMONS SCOTT F (US)) 5 June 2003 (2003-06-05)
D6 : DE 28 01 687 A (BAUTRANS FINANZ AG) 19 July 1979 (1979-07-19)
D7 : FR 2 719 053 A (BOCAHUT ETS) 27 October 1995 (1995-10-27)
 - 2 Document D1 discloses (cf. claims 1-3, 6) a settable composition of Class C fly ash, comprising in addition inter alia: a source of Ca (5 wt% hydrated lime or alternatively 0.1 - 2 wt% of a Ca - salt) and 0.1- 1 wt% of an additive based on a morpholine derivate. Said additive is considered to act as an iron chelating compound (see in this respect the present application on page 3, line 24).
-
- 2.1 INDEPENDENT CLAIM 1
As can be seen from the above, document D1 discloses in combination all the features defined in independent claim 1. Hence the subject-matter of this claim is not new (Article 33(2) PCT).
 - 2.2 INDEPENDENT CLAIM 2
As can be seen from the above, document D1, which mentions also the possibility to add also Class F fly ash (as a filler) discloses in combination all the features defined in independent claim 2. Hence the subject-matter of this claim is not new.
 - 2.3 INDEPENDENT CLAIMS 3 AND 4
As can be seen from the above, document D1 discloses in combination all the features defined in independent claims 3 and 4. Hence the subject-matter of these claims is not new.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2004/007247

- 3 Document D2 discloses (cf. claims 1-3, page 3, line 25 and page 5, first line) a settable composition combining inter alia fly ash (preferably Class C fly ash), 0.1 to 5 wt% of a chelating agent (Versene) and 0.1 to 10 wt% of metacaoline as Ca-source.

3.1 INDEPENDENT CLAIM 4

As can be seen from the above, document D2 discloses in combination all the features defined in independent claim 4. Hence the subject-matter of this claim is not new (Article 33(2) PCT).

4 DEPENDENT CLAIMS 5-8

Dependent claims 5-8 do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty (claims 6, 8 - D1) and/or inventive step (claims 5-8 upon combination of the documents D1 and D3 with D4; Article 33(2) and (3) PCT).

5 DEPENDENT CLAIM 9

The combination of the features of dependent claim 9 is neither known from, nor rendered obvious by, the available prior art.

Re Item VII

6. The units "psi" and "inches" employed on pages 1, 2, 4 and 5 are not additionally expressed in terms of the units stipulated by Rule 10.1/(a)/and/(b) PCT.

Re Item VIII.

7 Clarity - Art. 6 PCT:

- 7.1 Although claims 1,2 and 4 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and could be drafted using the dependent form starting from claim 4, which represents the broadest mode of the invention. The aforementioned claims therefore lack conciseness and

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

International application No.

PCT/US2004/007247

as such do not meet the requirements of Article 6 PCT.

- 7.2 The embodiments of the invention described in examples 1 to 13 do not use an iron chelating compound and thus do not fall within the scope of the independent claims. This inconsistency between the claims and the description leads to doubt concerning the matter for which protection is sought, thereby rendering the claims unclear.
- 7.3 The vague statement in the description on page 3, lines 18-20 implies that the use of an iron chelating compound is optional, thus the subject-matter for which protection is sought may be different to that defined by the claims, which require an iron chelating compound as mandatory; thereby resulting in lack of clarity when using the description to interpret the claims.
- 7.4 For clarity the introductory part of the description (cf. the sentence on lines 8-10) should be revised.